

MARCO ISLAND CITY COUNCIL RESOLUTION NO. 00-15

**RELATING TO PETITION NUMBER OSP-00-01
OFF-SITE PARKING ON PROPERTY
HEREINAFTER DESCRIBED IN THE CITY OF MARCO ISLAND, FLORIDA**

WHEREAS, the Legislature of the State of Florida established the Charter of the City of Marco Island in Chapter 97-367, Laws of Florida ("City Charter"); and

WHEREAS, the City Charter provides that the Collier County Land Development Code in effect on August 28, 1997 ("Regulations") shall remain in effect as the City of Marco Island's transitional land development regulations; and

WHEREAS, the Marco Island City Council is acting as the Board of Zoning Appeals; and

WHEREAS, City Council, as the Board of Zoning Appeals, has held a public hearing after proper notice as provided in said Regulations was made, and has considered the advisability of off-site parking as shown on the attached plot plan, Exhibit "A" in an RSF-4-MIZO zone for the property hereinafter described, and has found as a matter of fact that satisfactory provision and arrangement have been made concerning all applicable matters required by said regulations and in accordance with Section 2.3.4.11 of the Collier County Land Development Code, for the City of Marco Island, and

WHEREAS, all interested parties have been given opportunity to be heard by this Board in public meeting assembled, and the Board having considered all matters presented;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING APPEALS of Marco Island, Florida, that:

The petition OSP-00-01, filed by Patrick H. Neal representing Phil Schifano with respect to the property herein described as 401 Bald Eagle Drive, further described as Tract "A", Marco Beach Unit One, Sections 8 & 9, Township 52 South, Range 26 East, City of Marco Island, Florida. The same is hereby approved for 26 off-site parking spaces as shown on the attached plat plan, Exhibit "A", of the RSF-4-MIZO zoning district wherein said property is located, subject to the following conditions:

- A. The off-site parking lot shall be utilized for valet parking only.
- B. The petitioner shall provide a driveway from Sprints parking lot to Front Street for direct ingress and egress for the valet parking attendants. The driveway shall be completed prior to issuance of a Certificate of Occupancy permit for Sidelines.
- C. Signage shall be posted at each of Sprints driveway entrances to indicate "private parking" and "valet parking only".
- D. The petitioner shall provide an adequate drop off and pick up area adjacent to Sidelines for valet customers.
- E. Six months prior to the termination of the ten (10) year lease agreement with Sprint, the petitioner shall secure another off-site parking agreement with the City. If an agreement cannot be executed, the petitioner will lose a percentage of the indoor seating equating to the amount of parking lost from Sprints off-site parking lot.
- F. Upon execution of the lease agreement with Sprint, Inc., the City Manager will authorize the recording of the restrictive covenant and the off-site parking agreement as approved by City Council. The applicant shall bear the cost of recording the restrictive covenant and off-site parking agreement in the Public Records of Collier County, and shall provide the documents when requesting a Certificate of Occupancy permit for Sidelines Sports Bar and Grill, located at 23 Front Street, Lots 49-54, Block 5, Marco Highlands, Section 9, Township 52 South, Range 26 East, City of Marco Island, Florida.
- G. The proposed off-site parking lot shall be striped and maintained by the petitioner.
- H. Landscaping, lighting, signage and pedestrian sidewalk improvements shall be provided by the petitioner prior to the issuance of a Certificate of Occupancy permit for Sidelines as shown on the attached plot plans, Exhibits "A" and "B".

BE IT FURTHER RESOLVED that this Resolution relating to Petition Number OSP-00-01 be recorded in the Minutes of this Board and filed with the Marco Island City Clerk's Office.

This Resolution adopted after motion, second and majority vote.

Done this 20th day of March, 2000.

MARCO ISLAND CITY COUNCIL
MARCO ISLAND, FLORIDA

By: Harry Cowin
Harry Cowin, Chairman

ATTEST:

L. L. F.
Laura Litzan
Deputy City Clerk

A. William Moss
A. William Moss
City Manager

Approved as to form and legality:

Kenneth B. Cuyler
Kenneth B. Cuyler
City Attorney

City Planner/Resolution. Petition OSP-00-01

**RESTRICTIVE COVENANT
AND OFF-SITE PARKING AGREEMENT**

This Agreement is made and entered into this _____ day of _____, 2000 by and between Phil Schifano and the Marco Island City Council (the "Council").

WHEREAS, Petitioner is the owner of 23 Front Street (hereinafter the "subject property"), more particularly described as: Lots 49-54, Block 5, Marco Highlands, Section 9, Township 52 South, Range 26 East, City of Marco Island, Florida; and

WHEREAS, the Petitioner wishes to operate off-site parking facilities on land more particularly described as 401 Bald Eagle Drive, further described as: Tract "A", Marco Beach Unit One, Sections 8 and 9, Township 52 South, Range 26 East, City of Marco Island, Florida comprised of RSF-4-MIZO zoning; and which Sprint, Florida, Inc. owns; and

WHEREAS, the proposed off-site parking does not adversely impact the character and quality of the neighborhood nor hinder the proper future development of surrounding properties; and

WHEREAS, the proposed off-site parking is in conformance with all of the criteria set forth in Section 2.3.4.11. of the Collier County Land Development Code; and

WHEREAS, the proposed off-site parking will provide twenty six (26) parking spaces which will serve to provide the necessary parking for Sidelines Sports Bar and Grill located at 23 Front Street; and

WHEREAS, City Council, acting as the Board of Zoning Appeals, has passed Resolution No. 00-15 attached hereto as Exhibit "A", relating to Petition OSP-00-01, approving the proposed off-site parking.

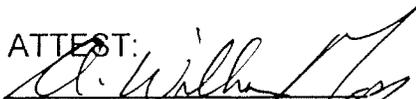
NOW, THEREFORE, in consideration thereof, the Petitioner agrees in his capacity as the owner of 23 Front Street as well as the tenant of property, which will provide the 26 off-site parking spaces (401 Bald Eagle Drive):

1. That the above recitals are true and correct and incorporated herein by reference.
2. That the proposed off-site parking areas shall never be encroached upon, used, sold, leased or conveyed for any purpose except for the use in conjunction with the subject property and used so long as the off-site parking facilities are required (minimum of ten (10) years) and that this Agreement constitutes a restrictive covenant.

3. That the petitioner shall bear the expense of recording the Agreement in the Official Records of Collier County which shall bind the property owner, his heirs, successors and assigns.
4. That the petitioner abide by all of the conditions and stipulations described in Resolution No. 00-15 and the Site Plan noted as Exhibit "A" attached hereto and incorporated by reference herein.
5. That all of the requirements for a Board of Zoning Appeals determination for off-site parking referenced in Petition OSP-00-01 have been met and approved by Planning Staff.
6. That this Agreement supersedes and modifies any prior Parking Agreement which may have been executed between Council and the then or current owner of the subject property and the property which will serve as the off-site parking area.
7. That this Agreement shall remain in full force and effect unless and until terminated by Council.
8. That this Agreement shall be voided by Council if other off-site parking facilities are provided in accordance with the requirements of Division 2.3 of the Land Development Code.
9. That upon failure to conform to any of the provisions of this Agreement or the attached Resolution No. 00-15, this Restrictive Covenant and Off-Site Parking Agreement shall become void and of no effect and the Petitioner shall be required to conform to all zoning regulations as contained in the Collier County Land Development Code, or as amended.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written.

ATTEST:


 A. William Moss
 City Manager/City Clerk

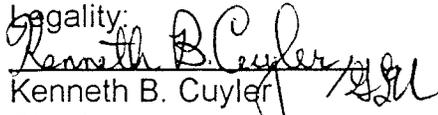
CITY OF MARCO ISLAND


 Harry Cowin, Chairman

PETITIONER AND OWNER OF
 LAND UPON WHICH OFF-SITE
 PARKING FACILITIES ARE TO
 BE LOCATED

 Sprint, Florida, Inc.

Approved as to Form and
 legality:


 Kenneth B. Cuyler
 City Attorney

 Phil Schifano



**RESTRICTIVE COVENANT
AND OFF-SITE PARKING AGREEMENT**

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WHEREAS, the proposed off-site parking is in conformance with all of the criteria set forth in Section 2.3.4.11. of the Collier County Land Development Code; and

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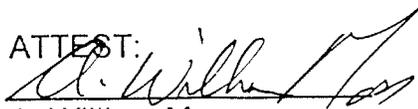
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1. That the above recitals are true and correct and incorporated herein by reference.
2. That the proposed off-site parking areas shall never be encroached upon, used, sold, leased or conveyed for any purpose except for the use in conjunction with the subject property and used so long as the off-site parking facilities are required (minimum of ten (10) years) and that this Agreement constitutes a restrictive covenant.

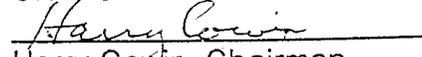
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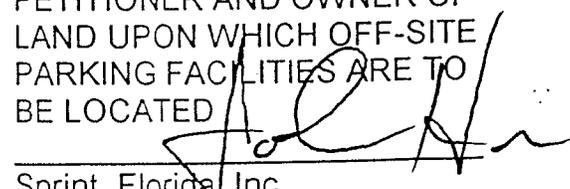
ATTEST:


 A. William Moss
 City Manager/City Clerk

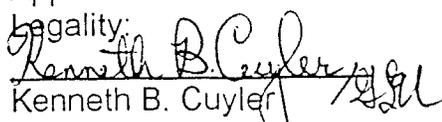
CITY OF MARCO ISLAND

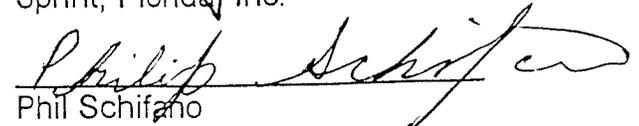

 Harry Cowin, Chairman

PETITIONER AND OWNER OF
 LAND UPON WHICH OFF-SITE
 PARKING FACILITIES ARE TO
 BE LOCATED


 Sprint, Florida, Inc.

Approved as to Form and
 Legality:


 Kenneth B. Cuyler
 City Attorney


 Phil Schifano

LEASE OF PARKING LOT

This Lease is entered into this 1st day of March, 2000, by and between Sprint-Florida, Incorporated, 6100 Sprint Parkway, Attn: Network Real Estate Manager-Facilities, Overland Park, Kansas 66251, Mailstop: KSOPHK0210-2A718, hereinafter known as "Lessor", and Sidelines Bar and Grill, Inc., 23 Front Street, Marco Island, Florida 34145, hereinafter referred to as "Lessee".

RECITALS

- A. Lessor owns a parking lot at 401 Bald Eagle Drive, Marco Island, Florida.
- B. Lessee is seeking additional parking space for Sidelines Bar and Grill, a restaurant owned by Lessee. Lessee is specifically seeking to acquire a shared use agreement with Lessor for 26 parking spaces at the south end of Lessor's property at the above address.
- C. Lessor is willing to lease a portion of its parking lot at 401 Bald Eagle Drive, Marco Island, Florida, specifically, the 26 spaces at the south end of the property, to Lessee.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree as follows:

SECTION ONE

PURPOSE OF LEASE AND DESCRIPTION OF PROPERTY LEASED

Lessor hereby leases to Lessee for use as a parking lot only the portion of its parking lot located on 401 Bald Eagle Drive, Marco Island, Florida. The portion of the lot leased is described as follows: The 26 spaces at the extreme south end of Lessor's property which is hereinafter referred to as the Premises. The Lessee and Lessor shall both have equal rights to use the Premises for parking during the term of the lease. The use of the Premises by Lessee shall be for valet parking only, with all cars parked by employees of Lessee (never

PN 136648

11.1.09/1.5

by customers) and clearly identified as valet parked cars. The Premises shall be kept free of debris by Lessee for the term of the Lease.

SECTION TWO RENT

Lessee shall pay as rental to Lessor the sum of \$386.10 per month for the term of the Lease, payable in advance on the first day of each month beginning with March 1, 2000.

SECTION THREE TERM

The term of the Lease shall be from March 1, 2000 until February 28, 2010. No extension or holdover shall be permitted. Upon termination of the Lease, the Premises shall be returned to Lessor in same conditions as when leased, normal wear and tear excepted.

SECTION FOUR SUBLEASE OR ASSIGNMENT

The Premises shall not be sublet in whole or in part, or this lease assigned or transferred.

SECTION FIVE TAXES

All property taxes on the premises shall be paid by Lessor. Sales tax resulting from this lease shall be paid by Lessee.

SECTION SIX LIABILITY AND INDEMNITY

Lessee shall hold Lessor harmless and indemnify Lessor from any and all liability for injuries or damages and claims and injury and damages to any person(s) or property arising from use of the Premises by Lessee, its employee or agents, provided such claims, injuries and damages are not caused by Lessor's willful actions or gross negligence.

Lessee shall be permitted to place signs on the property advising persons using the Premises that they do so at their own risk and that neither Lessee nor Lessor shall be responsible for damages to the person or property of persons parking on the leased premises. The wording and the placement of such signs shall be approved in advance by the Lessor.

Lessee shall also be permitted to make any safety improvements to the property to lessen the possibility of injury or damage. Such improvements shall be approved in advance by the Lessor.

Upon termination of this lease, Lessee shall remove all signs placed on the Premises, and at Lessor's discretion all improvements made to the Premises, under the terms of this Lease.

SECTION SEVEN INSURANCE

Lessee shall carry insurance to protect both Lessee and Lessor from and against all losses, expenses and liabilities resulting from any loss, injury or damage referred to in Section Six above. The minimum amounts for such insurance shall be as follows:

- | | | |
|-----|-----------------------|---|
| (a) | Public Liability | \$1,000,000.00 as to any one occurrence |
| (b) | Property Damage | \$1,000,000.00 as to any one occurrence |
| (c) | Automobile Coverage | \$1,000,000.00 as to any one person
\$100,000.00 as to any one occurrence
\$500,000.00 property damage--each occurrence |
| (d) | Worker's Compensation | Florida Statutory Limits |

The above insurance shall be written to protect both Lessee and Lessor. Lessee shall cause its insurance carrier(s) to submit directly to Lessor certificates of insurance showing the effective and expiration dates of the policies. The certificates shall contain a provision

that the insurance carrier(s) shall not modify, cancel or otherwise terminate the policy without fifteen (15) days prior written notification to Lessor. Lessee is required to have in effect in the above stated amounts for the life of this agreement. Lessee's failure to strictly comply with the requirement of the paragraph shall be a breach of this agreement for which Lessor may immediately terminate the Agreement.

SECTION EIGHT GRATUITIES

It is the written policy of Lessor to decline acceptance of gratuities offered by purchasers of products or services. During the negotiation and term of this Lease, and any extension thereof, Lessee shall not offer and shall not give a gratuity of any sort to any employee of Lessor. Lessee shall report the solicitation of a gratuity of any sort by a Lessor employee to an officer of Lessor. Failure to comply with this provision may result in termination of this Lease, or in such action as Lessor deems appropriate, regardless of whether Lessee initiated the offer of a gratuity, or an employee of Lessor solicited the gratuity.

SECTION NINE ATTORNEY'S FEES

In the event either party to this Agreement is required to take action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs, including reasonable attorney's fees and costs, for any appeals thereof as well as any collection cost incurred.

SECTION TEN GENERAL PROVISIONS

A. Failure or delay by either party to exercise any right, power, or privilege, under this Agreement, shall not operate as a waiver thereof.

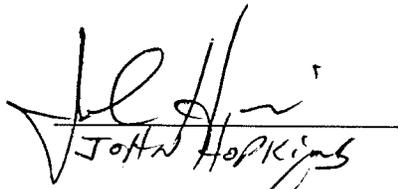
B.. This Agreement shall be governed by the law of the State of Florida.

C. This Agreement supersedes all prior oral and written agreements, representations, undertakings and proposals with the respect to the subject matter hereof. The parties may amend or modify this agreement only by written document signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have executed this Lease on the date first set forth above.

Witnesses:

Sprint-Florida, Incorporated

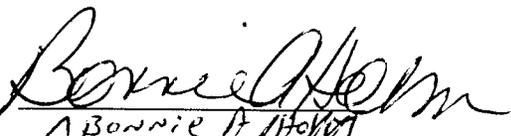
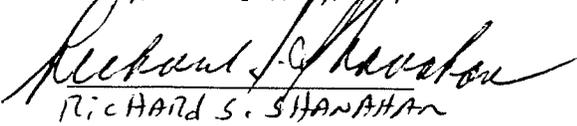

JOHN HOPKINS

JAMES R. LEHMANN

By: 
GREG THOMPSON
Title: Acting Manager
Network Real Estate

FORM
12B
APPROVED

Sidelines Bar and Grill, Inc.


Bonnie A. Howell

RICHARD S. SHANAHAN

By: 
PHIL SCHIFANO
Title: PRESIDENT

GRANT OF EASEMENT

This Grant of Easement is made this 1st day of March, 2000, by Sprint-Florida, Incorporated, 6100 Sprint Parkway, Attn: Network Real Estate Manager-Facilities, Overland Park, Kansas 66251, Mailstop: KSOPHK0210-2A718, Grantor, to Sidelines Bar and Grill, Inc., 23 front Street, Marco Island, Florida 34145, Grantee.

RECITALS

- A. Grantor is seized in fee simple and in possession of lands lying in Section 9, Township 52 South, Range 26 East, Collier County, Florida.
- B. Grantee desires to use a portion of that land for a sidewalk, an irrigation system, landscaping, buffering and as a pedestrian crossing to 26 parking spaces which Grantee is leasing from Grantor.
- C. Grantor is willing to grant an easement on a portion of its lands to the Grantee for the above described purposes.

Now, therefore, Grantor, in consideration of Ten Dollars (\$10.00) paid by the Grantee and other good and valuable consideration, the receipt of which is hereby acknowledged by Grantor, has granted, bargained, and sold to Grantee, its successors and assigns, an easement giving Grantee the above described rights on the property described as:

That portion of Tract "A" of Marco Beach Unit One, a subdivision according to the plat thereof, recorded in Plat Book 6, Pages 9-16 inclusive, in the Public Records of Collier County, Florida, more particularly described as follows: Beginning at the southeasterly corner of Tract "A" of Marco Beach Unit One on the westerly right-of-way line of Front Street (60 feet wide) at the northerly right-of-way line of Marco Lake Drive (60 feet wide); thence along the said northerly line of Marco Lake drive, North 89o44'33" West 10.00 feet; thence North 01o06'22" East 103.58 feet; thence North 88o53'38" West 3.36 feet; thence North 55o58'19" East 4.53 feet; thence North 32o28'07" West 8.88 feet, thence South 88o53'38" East 4.57 feet; thence North 01o06'22" East 500.51 feet to the northerly line of Tract "A"; thence along the same, North 56o38'29" East 12.13 feet to a point on the aforementioned westerly right-of-way line of Front Street; thence along the same South 01o06'22" West 620.79 feet to the Point Of Beginning.

Together with free right of ingress and egress over and across the above described parcel, insofar as such right of ingress and egress is necessary to the proper use of any other right granted herein.

Grantee agrees to fully maintain the sidewalk, irrigation system and landscaping within above described parcel in perpetuity. In the event that Grantee does not maintain the parcel to Grantor's satisfaction, Grantor may contract to cure the problem and bill Grantee for the expense.

In the event that a certain lease between Grantor and Grantee for 26 parking spaces shall terminate for any reason, then this easement shall automatically terminate with the lease.

ARW 28968
PIN 136696

STATE OF ~~FLORIDA~~ Kansas

COUNTY OF Johnson

The foregoing instrument was acknowledged before me this 31st day of March, 2000, by Greg Thompson, the Acting Manager-Facilities of Sprint-Florida, Incorporated, on behalf of the corporation. He is personally known to me or has produced a driver's license as identification and did not take an oath.

Peggy J. Weeks
Notary Public

State of Kansas
Peggy J. Weeks, Notary Public
My Appt. Expires 11/17/02

My Commission Expires: 11/17/02

STATE OF FLORIDA

COUNTY OF Collier

The foregoing instrument was acknowledged before me this 3rd day of February, 2000, by Phil Schifano the President of Sidelines Bar and Grill, Inc., a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced a driver's license as identification and did not take an oath.

Notary Public
Bonnie A. Holm

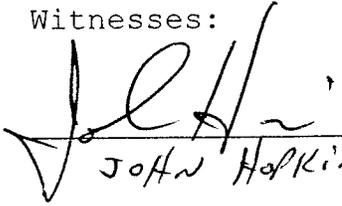
My Commission Expires:

 Bonnie A. Holm
My Commission CC742432
Expires May 13, 2002

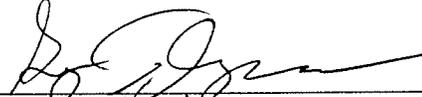
This document was prepared by:
John A. Hopkins, MC FLAPKA0305
Sprint-Florida, Incorporated
P. O. Box 165000
Altamonte Springs, Fl 32716-5000

IN WITNESS WHEREOF, Grantor has executed this Grant of Easement on the day and year first above written.

Witnesses:

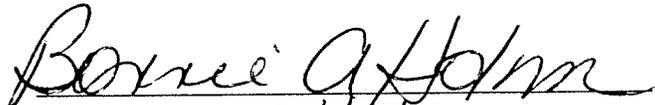

JOHN HOPKINS

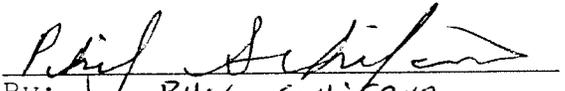
Sprint-Florida, Incorporated


By: Greg Thompson
Acting Manager, Network Real Estate
Sprint


JAMES R. LERMANN

Sidelines Bar and Grill, Inc.

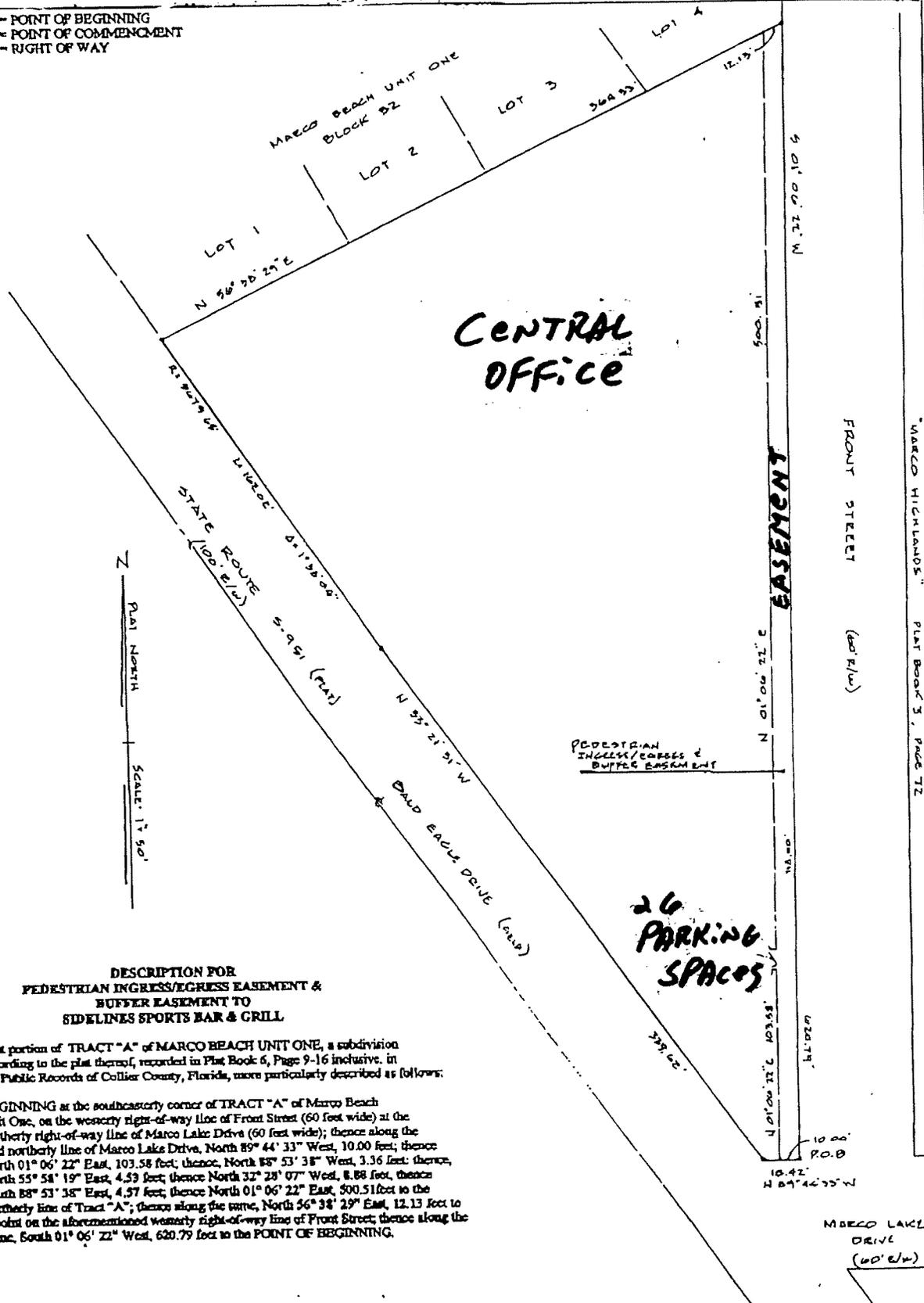

Bonnie A. Holm


By: PHIL SCHIFANO


RICHARD S. SHANAHAN

EXHIBIT "A"

P.O.B. = POINT OF BEGINNING
 P.O.C. = POINT OF COMMENCEMENT
 R/W = RIGHT OF WAY



**DESCRIPTION FOR
 PEDESTRIAN INGRESS/EGRESS EASEMENT &
 BUFFER EASEMENT TO
 SIDELINES SPORTS BAR & GRILL**

That portion of TRACT "A" of MARCO BEACH UNIT ONE, a subdivision according to the plat thereof, recorded in Plat Book 6, Page 9-16 inclusive, in the Public Records of Collier County, Florida, more particularly described as follows:

BEGINNING at the southeasterly corner of TRACT "A" of Marco Beach Unit One, on the westerly right-of-way line of Front Street (60 feet wide) at the northerly right-of-way line of Marco Lake Drive (60 feet wide); thence along the said northerly line of Marco Lake Drive, North 89° 44' 33" West, 10.00 feet; thence North 01° 06' 22" East, 103.58 feet; thence North 88° 53' 38" West, 3.36 feet; thence North 55° 54' 19" East, 4.53 feet; thence North 33° 28' 07" West, 8.88 feet; thence South 88° 53' 38" East, 4.57 feet; thence North 01° 06' 22" East, 500.51 feet to the northerly line of Tract "A"; thence along the same, North 56° 38' 29" East, 12.13 feet to a point on the aforementioned westerly right-of-way line of Front Street; thence along the same, South 01° 06' 22" West, 620.79 feet to the POINT OF BEGINNING.

[Signature]
 STEPHEN A. ROBERTS (L.S.P.)
 FLORIDA LICENSE NO. LB 2694

MARCO ISLAND LAND SURVEYING
 FLORIDA BUSINESS LICENSE NO. LB 6646

SECTION 8 & 9 TOWNSHIP 52S RANGE 26E

SKETCH & DESCRIPTION

PREPARED FOR: SIDELINES SPORTS, BAR & GRILL

MARCO ISLAND LAND SURVEYING
 21 TAHITI ROAD MARCO ISLAND FLORIDA 34145

SCALE: 1" = 50' DATE: JANUARY 26, 2000 DRAWN BY: E.A.H.